1 Clifford A. Chanler, State Bar No. 135534 Josh Voorhees, State Bar No. 241436 2 THE CHANLER GROUP 2560 Ninth Street 3 Parker Plaza, Suite 214 Berkeley, CA 94710-2565 4 Telephone: (510) 848-8880 Facsimile: (510) 848-8118 5 Attorneys for Plaintiffs 6 JOHN MOORE and ANTHONY E. HELD, PH.D, P.E. 7 8 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA 10 **COUNTY OF MARIN** 11 UNLIMITED CIVIL JURISDICTION 12 13 JOHN MOORE and ANTHONY E. HELD, PH.D., P.E., 14 Plaintiffs, AND INJUNCTIVE RELIEF 15 16 UNILEVER UNITED STATES, INC.; 17 ALBERTO-CULVER LLC; D.W.L. INTERNATIONAL TRADING, INC.; 18 OKABASHI BRANDS, INC.; 99 CENTS ONLY STORES LLC; NAMASTE 19 LABORATORIES, L.L.C.; MUELLER SPORTS MEDICINE, INC.; SHOWA BEST GLOVE, INC.; CARDINAL HEALTH, INC.: 20 and DOES 1-150, 21 Defendants. 22 23 24 25 26

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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### **NATURE OF THE ACTION**

- 1. This Complaint is a representative action brought by plaintiffs JOHN MOORE and ANTHONY E. HELD, PH.D., P.E. in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazards caused by exposures to diisononyl phthalate ("DINP"), a toxic chemical found in vinyl/PVC gloves and vinyl/PVC footwear sold by defendants in California.
- 2. By this Complaint, plaintiffs seek to remedy defendants' continuing failure to warn California citizens and other individuals about the risks of exposure to DINP present in and on vinyl/PVC gloves and vinyl/PVC footwear manufactured, distributed, and offered for sale or use by defendants to consumers and other individuals throughout the State of California.
- 3. Detectable levels of DINP are found in and on the vinyl/PVC gloves and vinyl/PVC footwear that defendants manufacture, distribute, and offer for sale to consumers and other individuals throughout the State of California.
- 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . ." Health & Safety Code § 25249.6.
- 5. Pursuant to Proposition 65, on December 20, 2013, California identified and listed DINP as a chemical known to cause cancer. DINP became subject to the "clear and reasonable warning" requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
- 6. Defendants manufacture, distribute, import, sell, and/or offer for sale products containing DINP as follows:
  - a. Defendants Unilever United States, Inc. and Alberto-Culver LLC
     manufacture, distribute, import, sell, and offer for sale without a health hazard warning in
     California vinyl/PVC gloves containing DINP, including but not limited to the *Motions*

Salon Haircare Silkening Shine Relaxer System (Gloves), #126229, UPC # 0 87300 60122 9.

- b. Defendant D.W.L. International Trading Inc. manufactures, distributes, imports, sells, and offers for sale without a health hazard warning in California vinyl/PVC gloves containing DINP, including but not limited to the *Winco Disposable Vinyl Gloves*, *Style # GLV-M*, #53, *UPC # 8 11642 01756 7*.
- c. Defendant 99 Cents Only Stores LLC manufactures, distributes, imports, sells, and offers for sale without a health hazard warning in California vinyl/PVC gloves containing DINP, including but not limited to the *Pure Cleanse by Spic & Span Disposable Vinyl Gloves, Item #861A, UPC # 8 12751 00861 3.*
- d. Defendant Namaste Laboratories, L.L.C. manufactures, distributes, imports, sells, and offers for sale without a health hazard warning in California vinyl/PVC gloves containing DINP, including but not limited to the ORS Olive Oil Built-In Protection No-Lye Hair Relaxer (Gloves), UPC # 6 32169 11099 5.
- e. Defendant Mueller Sports Medicine, Inc. manufactures, distributes, imports, sells, and offers for sale without a health hazard warning in California vinyl/PVC gloves containing DINP, including but not limited to the *Mueller LEAGUE* First Aid Kit (Gloves), REF 200725, UPC # 0 74676 20725 4.
- f. Defendant Showa Best Glove, Inc. manufactures, distributes, imports, sells, and offers for sale without a health hazard warning in California vinyl/PVC gloves containing DINP, including but not limited to the ATLAS Glove, #620-L, UPC # 7 13740 3949 2 and Black Knight Gloves, #7712R-10.
- g. Defendant Cardinal Health, Inc. manufactures, distributes, imports, sells, and offers for sale without a health hazard warning in California vinyl/PVC gloves containing DINP, including but not limited to the *Leader Medical Exam Quality Vinyl Gloves*, *UPC #0 96295 11696 0*.

- h. Defendant Okabashi Brands, Inc. manufactures, distributes, imports, sells, and offers for sale without a health hazard warning in California vinyl/PVC footwear containing DINP that require a warning under Proposition 65 including, but not limited to the Okabashi Flip Flops Maui, UPC # 0 42929 91023 7.
- 7. All such vinyl/PVC gloves and vinyl/PVC footwear containing DINP, as listed in paragraphs 6(a) through (h) above, shall be referred to hereinafter as "PRODUCTS." As to each specific defendant, however, PRODUCTS shall refer only to those specific products listed for each specific defendant in paragraphs 6(a) through (h) above.
- 8. Defendants' failure to warn consumers and other individuals in the State of California of the health hazards associated with exposures to DINP in conjunction with defendants' sales of the PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to enjoinment of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).
- 9. For defendants' violations of Proposition 65, plaintiffs seek preliminary and permanent injunctive relief to compel defendants to provide purchasers or users of the PRODUCTS with the required warning regarding the health hazards associated with exposures to DINP. Health & Safety Code § 25249.7(a).
- 10. Pursuant to Health and Safety Code section 25249.7(b), plaintiffs also seek civil penalties against defendants for their violations of Proposition 65.

### **PARTIES**

- 11. Plaintiffs JOHN MOORE and ANTHONY E. HELD, PH.D., P.E. are each citizens of the State of California who are dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposures from consumer products; and they bring this action in the public interest pursuant to Health and Safety Code Section 25249.7(d).
- 12. Defendants Unilever United States, Inc. ("UNILVER"), Alberto-Culver LLC ("ALBERTO"), D.W.L. International Trading Inc. ("DWL"), 99 Cents Only Stores LLC ("99

CENTS"), Namaste Laboratories, L.L.C. ("NAMASTE"), Mueller Sports Medicine, Inc.
("MUELLER"), Showa Best Glove, Inc. ("SHOWA"), Cardinal Health, Inc. ("CARDINAL")
and Okabashi Brands, Inc. ("OKABASHI"), are each a person in the course of doing business
within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

- 13. UNILEVER, ALBERTO, DWL, 99 CENTS, NAMASTE, MUELLER, SHOWA, CARDINAL, and OKABASHI each manufacture, import, distribute, sell, and/or offer the PRODUCTS for sale or use in the State of California, or imply by their conduct that they manufacture, import, distribute, sell, and/or offer the PRODUCTS for sale or use in the State of California.
- 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.
- 15. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate, and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate, and manufacture one or more of the PRODUCTS offered for sale or use in the State of California.
- 16. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.
- 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in the State of California.
- 18. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.
- 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the State of California.

- 20. At this time, the true names of defendants DOES 1 through 150, inclusive, are unknown to plaintiffs, who, therefore, sues said defendants by their fictitious names pursuant to Code of Civil Procedure section 474. Plaintiffs are informed and believe, and on that basis allege, that each of the fictitiously named defendants is responsible for the acts and occurrences alleged herein. When ascertained, their true names shall be reflected in an amended complaint.
- 21. UNILEVER, ALBERTO, DWL, 99 CENTS, NAMASTE, MUELLER, SHOWA, CARDINAL, OKABASHI, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as "DEFENDANTS."

#### **VENUE AND JURISDICTION**

- 22. Venue is proper in Marin County Superior Court, pursuant to Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because plaintiffs seek civil penalties against DEFENDANTS, because one or more instances of wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS conducted, and continue to conduct, business in Marin County with respect to the PRODUCTS.
- 23. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, section 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other trial courts." The statute under which this action is brought does not specify any other basis of subject matter jurisdiction.
- 24. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiffs' information and good faith belief that each defendant is a person, firm, corporation or association that is a citizen of the State of California, has sufficient minimum contacts in the State of California, and/or otherwise purposefully avails itself of the California market.

  DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

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### **FIRST CAUSE OF ACTION**

### (Violation of Proposition 65 - Against All Defendants)

- 25. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, Paragraphs 1 through 24, inclusive.
- 26. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986, the People of California expressly declared their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm."
- 27. Proposition 65 states, "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . . " Health & Safety Code § 25249.6.
- 28. On December 22, 2014, JOHN MOORE provided sixty-day notices of violation, together with the requisite certificates of merit, to DWL, NAMASTE, SHOWA, and certain public enforcement agencies, alleging that, as a result of DEFENDANTS' sales of their respective PRODUCTS containing DINP, purchasers and users in the State of California were being exposed to DINP resulting from their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first having been provided with a "clear and reasonable warning" regarding the harms associated with such exposures, as required by Proposition 65.
- 29. On December 22, 2014, ANTHONY E. HELD, PH.D., P.E. provided sixty-day notices of violation, together with the requisite certificates of merit, to UNILEVER, ALBERTO, 99 CENTS, MUELLER, CARDINAL, and OKABASHI, and certain public enforcement agencies, alleging that, as a result of DEFENDANTS' sales of their respective PRODUCTS containing DINP, purchasers and users in the State of California were being exposed to DINP resulting from their reasonably foreseeable use of the PRODUCTS, without

the individual purchasers and users first having been provided with a "clear and reasonable warning" regarding the harms associated with such exposures, as required by Proposition 65.

- 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS' violations have continued beyond their receipt of plaintiffs' sixty-day notices of violation.

  DEFENDANTS' violations are ongoing and continuous in nature, and, as such, will continue in the future.
- 31. After receiving plaintiffs' sixty-day notices of violation, none of the appropriate public enforcement agencies have commenced and diligently prosecuted a cause of action against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the subject of plaintiffs' notices of violation.
- 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer for sale or use in California cause exposures to DINP as a result of the reasonably foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers and other individuals in California are not exempt from the "clear and reasonable" warning requirements of Proposition 65, yet DEFENDANTS provide no warning.
- 33. DEFENDANTS knew or should have known that the PRODUCTS they manufactured, imported, distributed, sold, and offered for sale or use in California contained DINP.
- 34. DINP is present in or on the PRODUCTS in such a way as to expose individuals to DINP through dermal contact and/or ingestion during reasonably foreseeable use.
- 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and continues to cause, consumer exposures to DINP, as defined by title 27 of the California Code of Regulations, section 25602(b).
- 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of the PRODUCTS exposed individuals to DINP through dermal contact and/or ingestion.

- 37. DEFENDANTS intended that exposures to DINP from the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers and other individuals in California.
- 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers and other individuals in California who were or who would become exposed to DINP through dermal contact and/or ingestion resulting from their use of the PRODUCTS.
- 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted directly by California voters, individuals exposed to DINP through dermal contact and/or ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear and reasonable" health hazard warning, have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.
- 40. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each violation.
- 41. As a consequence of the above-described acts, Health and Safety Code section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

#### PRAYER FOR RELIEF

Wherefore, plaintiffs pray for judgment against DEFENDANTS as follows:

- 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;
- 2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a "clear and